

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF COLONY MEADOWS FILING NO. TWO SUBDIVISION  
April 12, 2005**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COLONY MEADOWS FILING NO. TWO SUBDIVISION, made the date hereinafter set forth by David M. Coop, hereinafter referred to as "Declarant".

Declarant is the owner of certain property in the City of Clifton, County of Mesa, and State of Colorado, more particularly described as: Colony Meadows Filing No. Two Subdivision.

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereto, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**ARTICE I  
DEFINITIONS**

Section 1. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee set forth at Article VI of this Declaration.

Section 2. "Association" shall mean and refer to, Colony Meadows Filing No. Two Homeowners Association, Inc., its successors and assigns.

Section 3. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. Such Common Area shall include open space deeded on the Colony Meadows Filing No. Two Subdivision plat. All autocourts and the utilities located in the autocourts are the responsibility of the homeowners association.

Section 4. "Declarant" shall mean and refer to David M. Coop, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Owner" shall mean and refer to the recorded owner, whether one or more persons or utilities of fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property herein described in Exhibit "A" including any additional Lots and other real property as may later be brought within the jurisdiction of the Association pursuant to Article VII hereof.

## ARTICLE II PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owner's Right of Enjoyment. In compliance with the provisions of the Colorado Interest Ownership act of the State of Colorado, and subject to the provisions of Section 2 of this Article, every owner shall have a nonexclusive right to enjoy and use the facilities, if any, within the Common Area, and such right shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owner's Rights. The right of enjoyment created hereby shall be subject to the following:

a. The right of the Association to promulgate and publish rules and regulations with which each Owner shall strictly comply;

b. The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of an Owner for an Owner for a period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for an infraction of its published rules and regulations; and

c. The right of the Association to close or limit use of the Common Area while maintaining, repairing and/or making replacements in the Common Area.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on his Lot.

## ARTICLE III THE ASSOCIATION

Section 1. Membership. Every Owner of any Lot within Colony Meadows Filing No. Two Subdivision shall be entitled and required to be a member of the Association, a non-profit corporation organized under the laws of the State of Colorado, which Association shall be organized and made effective by the Declarant. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting. The Association shall have one class of voting membership, and each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Obligations and Powers of Association. The Association shall have the obligation, subject to and in accordance with this Declaration, to perform certain duties for the benefit of the Owners of each Lot within the Properties, including administration of the irrigation practices and maintenance of the Common Elements for Colony Meadows Filing No. Two Subdivision, and shall have general powers to enforce any lien for assessments set forth in Article IV hereof, as provided by the Colorado Common Interest Ownership Act.

Section 4. All streets, roads and Rights-of-Way are deeded to Mesa County for the use of the public forever.

Section 5. All Multi-purpose Easement to the Mesa County for the use of County-approved; utilities and appurtenances including, but not limited to, electrical lines, cable TV line, telephone line, natural gas pipelines, sanitary sewer lines, storm sewers, water line, and also for the installation and maintenance of traffic control facilities, street lighting, landscaping, trees and grade structures.

Section 6. All Drainage, Irrigation Easements to the Homeowners Association; as perpetual easement for the installation, operation, maintenance and repair of drainage improvements for the conveyance of stormwater runoff which flows from within the areas platted, through man-made or natural facilities above or below ground, and the subdivision's irrigation system and appurtenances including, but not limited to, the underground irrigation lines and drainage swales.

Section 7. Grand Valley Rural Power Lines, Inc., for the installation, operation, maintenance and repair of existing overhead power lines.

Section 8. Tracts A, B, E, F, K, L, M, N and Q are deeded to the Homeowners Association, if formed now or in the future, or if not, to the owner as undivided co-tenants, not subject to partition, of lots and other tracts hereby platted as access, drainage and utility easements for ingress and egress to adjoining lots and also for the use of County-approved utilities and appurtenances including, but not limited to, the electrical lines, cable TV line, telephone line, natural gas pipelines, sanitary sewer lines, storm sewers, water line and drainage conveyance elements. The Association shall be responsible for the maintenance, upkeep and repair of the concrete driveway surfaces within each Tract.

Section 9. Tracts C, D, O and P are deeded to the Association for use as public parking and access for purposes of Mail pickup and delivery, if formed now or in the future, or if not, to the owner as undivided co-tenants, not subject to partition, of lots and other tracts hereby platted as access, drainage and utility easements for ingress and egress to adjoining lots and also for the use of County-approved utilities and appurtenances. The Association shall be responsible for the maintenance, upkeep and repair of the concrete parking surfaces within each Tract.

Section 10. Tracts G, H, I and J are deeded to the Homeowner's Association as Open-Space for the installation, operation, maintenance and repair of landscaping, trees, irrigation line and appurtenances if formed now or in the future, or if not, to the owner as undivided co-tenants, not subject to partition, of lots and other tracts hereby platted as access, drainage and utility

easements for ingress and egress to adjoining lots and also for the use of County-approved utilities and appurtenances. The Association shall be responsible for the maintenance, upkeep and repair of any trails placed within the subdivision as shown on the plat.

Section 11. That basement and half-basement type foundation construction shall not be allowed within the development and further that an engineered foundation shall be required for each Lot. The foundation design shall be prepared by a Licensed Professional Engineer.

Section 12. No fences or other structures may be located on or through the 12-foot Trail Right-of-Way which could effect its usage by Mesa County and that no other personal property may be placed on or stored within the Right-of-Way.

#### **ARTICLE IV ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who has the Owner of such property at the time the assessment fell due. The personal obligation for delinquent shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide and maintain the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of 75% of the Lots to nondeclarant Owners, the maximum annual assessment shall be One Hundred Fifty Dollars (\$150.00) per Lot.

Section 4. From and after January 1 of the year immediately following the conveyance of 75% of the Lots to nondeclarant Owners, the maximum assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

Section 5. In the event that the HOA dues are not received by the due date, a late fee can be assessed at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common area, or by abandonment of his lot.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

## ARTICLE V USE RESTRICTIONS

Section 1. Use of Lots. The Lots and any buildings or structures now or hereafter erected thereon shall be subject to the Mesa County Land Development Code. Such lots and buildings or structures shall be used for and occupied as single-family residences only, not to exceed 2 stories. The outside measurement of above grade floor area of each residence, exclusive of porches, patios, and garages, shall not be less than 900 square feet in the case of a single-story residence, and 1,200 square feet in the case of a two-story residence. Fire-rated construction material shall be used on the siding of all the dwelling units (no vinyl siding). No wall penetrations will occur on one of adjacent dwelling units when the separation between units is less than 15 feet.

Section 2. No Further Subdividing. No lots may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof.

Section 3. Fences. Fences or hedges shall be permitted within the Properties, subject to compliance with the Mesa County Land Development zoning code and requirements. Side and rear lot line privacy fences of six feet or less in height shall be permitted subject to approval of style and materials by the Architectural Control Committee. All fencing, locates, and installation is the responsibility of the individual lot owner(s).

Section 4. Nuisance. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood will be permitted. Activities that are or might be unsafe or hazardous to any person or property include, but are not limited to, open fires (except in a contained barbecue unit while attended in use for cooking purposes), burning of trash or rubbish, and the storage of hazardous materials. Any remedial costs incurred by the Association as a result of an Owner's non-compliance with this provision shall be charged against the Owner or Tenant of said Lot, and shall be collected in the same manner as set forth in Article IV hereof.

Section 5. Adjacent Agricultural Use. It is specifically understood and recognized that agricultural land uses and practices are being conducted on properties adjoined the subdivision and that such routine practices of plowing, spraying and cultivating said properties are not to be interfered with or objected to by the owners of the lots in the subdivision.

Section 6. Landscaping. All landscaping will incorporate "xerscape" landscape techniques. The Stepping Road The House publication will be used for the landscape design around each dwelling. Front yard landscaping and boundary fencing must be completed within

60 days of occupancy, weather permitting. Rear yard landscaping must be completed within 120 days of occupancy, weather permitting. Irrigation waters is not provided to individual Lots. An underground watering system is required. All installation and locates are the responsibility of the individual Lot owner(s). Only three houses are allowed to water at the same time at a rate of 9 gpm for a maximum of 2.5 hrs per house. A scheduled time should be set up to enforce this by the homeowners association.

Section 7. Detention Pond. All responsibilities of the detention pond are to be shared equally by both Colony Meadows I and Colony Meadows II.

Section 8. Temporary and Accessory Structures. No structures of a temporary nature, such as a tent, trailer house, or recreational vehicle, and no garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. Detached accessory buildings for nonresidential use such as storage sheds are permitted subject to applicable setback requirements. No elevated or underground tanks of any kind shall be permitted on any Lot or other area of the properties.

Section 9. Exterior Maintenance and Repair. Each Lot, the structures thereon, and landscaping thereof shall be kept and maintained in good order and repair in a manner consistent with the preservation and enhancement of the value of the properties and visual appearance of the subdivision. Front yard landscaping must be completed within one (1) year of issuance of a building permit on any Lot from the requisite governmental authority. Lot and landowners must control noxious weeds, as defined by the Mesa County Noxious Weed Plan, according to the recommendations of the Mesa County Pest Inspector. Control of noxious weeds in the Common Area is the responsibility of the Homeowner's Association.

## ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

Section 1. Appointment of Architectural Control Committee. The Architectural Control Committee (hereinafter the "Committee") shall consist of three (3) persons to be appointed by a majority of the Board.

Section 2. Submission of Plans. Copies of plans and specifications relating to a proposed improvement, including, but not limited to, residences, fences, garages, and outbuildings, shall be submitted to the Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and a perspective sketch if required, and other details necessary to explain any feature or component of the proposed improvement(s).

Section 3. Matters Considered. The Committee shall consider the aesthetic and functional design of any proposed improvement(s) as to the quality of workmanship and improvement of the properties, the performance of the Declarant's obligations hereunder, and the sale of the Lots. Any special Declarant rights created or reserved under this Article or elsewhere

in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred, executed by Declarant and its transferee, and recorded in the office of the clerk and recorder of Mesa County, Colorado. The rights of Declarant reserved in this Section 7 shall expire five (5) years after the date of recording of this Declaration. Any rights granted to Declarant under this Declaration shall expire on the date, which is ten (10) years from the date of recording of this Declaration, unless otherwise provided herein.

Section 4. Easement for Encroachment. If any portion of a structure encroaches upon the Common Area or upon any adjoining Lot, or if any portion of the Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist. Nothing contained herein shall be construed as permitting any violation of setback requirements as set forth on the subdivision plat.

## **SECTION VII RIGHT TO ENFORCE**

The restrictions set forth in this declaration shall run with the land and bind the parties and their successors and assigns. All parties claiming by, through, or under the parties shall be taken to hold, agree, and covenant with the parties, their successors and assigns, and with each of them to conform to and observe the restrictions as to the use of the lots and the construction of improvements on them. However, no restrictions in this declaration shall be personally binding on any corporation, person, or persons except in respect to breaches committed during its, his, her, or their seizing of the title of the land. The owner or owners of any of the above-mentioned land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions, in addition to ordinary legal actions for damages. The failure of the parties or owner or owners of any other lot or lots shown on this plat to enforce any of the restrictions set forth in this declaration at the time of its violation shall in no event be deemed to be a waiver of a right to do so subsequently.

## **ARTICLE VIII MISCELLANEOUS AND GENERAL PROVISIONS**

A. Each owner, by purchasing any lot in the subdivision shall automatically become a member of the Association and shall be bound by the terms and conditions of this declaration, the articles and bylaws of the Association, and such rules and regulations as may be promulgated and adopted by the Association under the articles and bylaws.

B. On transfer, conveyance, or sale by any owner of all of his or her or its interest in any subdivision lot, the owner's membership in the Association shall cease and terminate.

C. Except as provided in this declaration, the Association shall be the sole judge of the qualifications of its membership and of the right to participate in and vote at its meetings.

**D. The official address of the Association is 476 Ol' Sun Drive, Grand Junction, Mesa County, Colorado, 81504, and shall remain so until changed by the Association, at which time the Association shall notify each member of the change in address.**

**E. Each lot owner or lot purchaser, on the purchase of the lot, shall immediately notify the Association of the owner's name and address.**

**F. By written consent of two-thirds of all of the lot owners, the Association may be given such additional powers as may be described by the Association, or otherwise modify or amend this declaration in any manner.**

**G. Prior to the actual organization or incorporation of the Association contemplated by the terms of this declaration and as set forth herein, Developer shall have the right, at its option, to perform the duties and assume the obligations, levy and collect the assessments and charges, and otherwise exercise the powers conferred by this instrument on the Association in the same way and in the same manner as though all such powers and duties were given in this instrument to developer directly. Developer shall also have the right to modify, amend, repeal, or change any of the terms of this declaration prior to the actual organization or incorporation of the Association.**

**H. The Association shall, at all times, observe all of the laws, regulations, ordinances, and the like of the City of Grand Junction, Mesa County, Colorado, and of the United States of America, and if, at any time, any of the provisions of this declaration shall be found to be in conflict with them, then such parts of this declaration as are in conflict with those laws, regulations, ordinances, and the like shall become null and void, but no other part of this declaration not in conflict shall be affected.**

**I. Subject to the limitations set forth in this declaration, Association shall have the right to make such reasonable rules and regulations and to provide such means and to employ such agents as will enable it adequately and properly to carry out the provisions of this declaration.**

**J. This declaration may be terminated, and all of the real property now or hereafter affected may be released from all or any part of the terms and conditions of this declaration, by the owners of two-thirds of the properties subject to this declaration at any time it is proposed to terminate this declaration, by executing and acknowledging an appropriate written agreement or agreements for that purpose, and filing the same with the office of the Clerk and Recorder of Mesa County, Colorado.**

**K. All of the provisions of this declaration shall be deemed to be covenants running with the land, and shall be binding on and inure to the benefit of the owners of the properties described in Exhibit "A", their heirs, successors, and assigns. All parties claiming by, through, or under them shall be taken to hold, agree, and covenant with such owners, their successors in title, and with each other, to conform to and observe all of the terms and conditions contained in this declaration.**



L. Any lot owner, or the Association, may maintain any legal proceedings to compel or enforce any of the terms and conditions of this declaration.

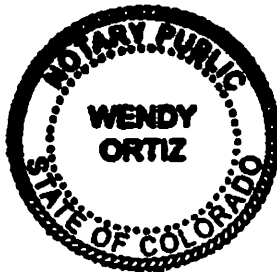
M. The initial members of the board of directors of the Association shall be David M. Coop, 476 Ol' Sun Drive, of the City of Grand Junction, Mesa County, Colorado.

**ARTICLE IX  
NOTICES**

Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed on the name of the Owner at such registered mailing address. However, if any owner fails to notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by registered or certified mail, postage prepaid, to David M. Coop, P.O. Box 55363, Grand Junction CO 81505, until such address is changed by the Association.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its had and seal this 14<sup>th</sup> day of April, 2005.

Attest:



My Commission Expires 10/07/06

*Wendy Ortiz*

  
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David M. Coop